UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
JOHN STANTON WICOFF and	)	CASE NO. 03-33126 HCD
LYNDAL ANN WICOFF,	)	CHAPTER 13
	)	
DEBTORS.	)	

Appearances:

Michael J. Chapman, Esq., attorney for creditor Chase Manhattan Mortgage Corporation, Javitch Block & Rathbone LLP, 602 Main Street, Suite 500, Cincinnati, Ohio 45202; and

William L. Hoehner, Esq., attorney for debtors, 330 South 35th Street, South Bend, Indiana 46615.

MEMORANDUM OF DECISION

At South Bend, Indiana, on March 30, 2004.

The matter before the court is the valuation of the residential mobile home of the debtors John Stanton Wicoff and Lyndal Anne Wicoff ("debtors"). The creditor Chase Manhattan Mortgage Corporation ("Chase") filed an Objection to the Debtors' Chapter 13 Plan, challenging the plan's valuation of the mobile home. At a pre-trial hearing, the parties agreed that a valuation hearing was required. The trial on Chase's Objection to Confirmation was held on October 22, 2003. The court then took the matter of valuation of the debtors' mobile home under advisement.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(K), (L) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1)

and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 7052. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

The debtors reside in a 1994 Champion Sovereign 28-foot by 64-foot mobile home. The purchase price for it was $52,658.00. On June 7, 1995, the debtors entered into a retail installment contract and security agreement, financing $47,572.00 of the cost. The debtors refinanced the debt, in the amount of $44,462.67, with Chase on November 19, 2001. Their monthly payments were set at $457.18, with an interest rate of 9.31%.

The debtors filed their chapter 13 petition on June 2, 2003. On their schedules, they valued their mobile home at $28,800.00. They listed Chase's claim in the amount of $44,106.00 and allocated $28,800.00 as the secured portion of the claim and $15,306.00 as the unsecured portion. Their proposed chapter 13 plan reiterated that valuation: It acknowledged Chase's claim for $44,106.00, but stated that the value of the creditor's interest in the estate's interest in the collateral was only $28,800.00. The plan proposed to modify the rights of the creditor by bifurcating the claim into a $28,800.00 secured claim, to be paid in full during the life of the plan, and a $15,306.00 general unsecured claim.

Chase objected to the plan's modification of its rights. It asserted that its claim, as stated on its proof of claim, was $44,462.67 and that the fair market value of the property was at least $41,865.15, which it asserted was the N.A.D.A. value of similar property. Chase also contended that the debtors' plan was not feasible because the debtors were unable to pay the necessary increase in the principal and interest payments to the creditor over the period of the plan.

At the valuation hearing, held October 22, 2003, Chase presented three witnesses: William McMullen, president of A2Z Mobile Home Services, LLC ("A2Z"), and two of his field representatives, Brenda and Dave

Miars. The three of them conducted the appraisal of the debtors' mobile home, and each testified concerning his and her part in that appraisal.

William McMullen testified that he started his business A2Z in Dublin, Ohio, in April 2001, but that he has been in the mobile home business since 1984. A2Z appraises and inspects mobile homes for clients. The business is located in thirty or more states. His office appraises five or six mobile homes a month for bankruptcy matters. He himself is a licensed appraiser. He conducts one or two of the appraisals each month and reviews the appraisals done by his field representatives. Chase is one of the many lenders for whom he conducts appraisals, he stated. The court found that he was qualified as an expert appraiser.

McMullen's appraisals use the N.A.D.A. appraisal system and software. It is a nationwide service, generally accepted throughout the industry to give a book value for a mobile home, he said. It is updated three times a year with new values for all items in a mobile home. McMullen testified that he appraises on a replacement value basis. He or a field representative performs the inspection, writes an inspection report, compiles the data on the mobile home components, and then runs the data through the N.A.D.A. software to learn the value on a cost basis.

He appraised the debtors' mobile home, he testified, and submitted the appraisal to Chase on August 19, 2003. *See* Cr. Ex. 1. On August 3, 2003, his field representatives did a full inspection of the site property, compiled the checklist, documented all the items they noted, and took 40-50 photographs. They sent the information electronically to him, and he gave a value to everything noted. Brenda and Dave Miars, his field representatives, are not licensed appraisers, he said, but are well trained by him in inspecting mobile homes, noting damage, giving condition reports, and finding the problems in the homes.

The A2Z appraisal of the debtors' mobile home valued the home at $44,970.00. Referring to Creditor's Exhibit 1, McMullen stated that he began with a base book value, predicated on the N.A.D.A. Manufactured Housing Appraisal Guide, that took into account the age, make, model, and location of the mobile

home. The value then increased or decreased based on other factors. In this case, the value increased by 3% because, in Indiana, mobile homes retain their value a little better than in other states. The overall condition of the debtors' mobile home was good, and that increased the value by 7%. The value was reduced by $2,840, because of missing tires and axles, and increased by $4,559 because of the valuation of such components as the vinyl exterior, a skirt, a fireplace, and anything above the standard model. There was a community upward adjustment of 8%, as well, he stated. Back at corporate headquarters, McMullen reviewed the entire list and photographs sent by the field representatives. He checked the validity and accuracy of the information. Based on that information, he came up with the actual depreciated value of the mobile home. *See* Cr. Ex. 1, B.

McMullen testified that the only subjective component in the valuation was the rating of the "overall condition" of the mobile home. In this case, the field representatives noted that the home was in good shape and had been well maintained. In his personal opinion, McMullen said, homes built after 1976 are built to last thirty years, because requirements for manufactured homes were more demanding after that. The life of the debtors' home, built in 1994, should be thirty years, particularly because it was so well maintained. He stated that he had confidence in the Miars' ability to evaluate. He gave the overall cost of the mobile home a 7% increase, based on their analysis, and arrived at a replacement value of the home, on the date of the appraisal, of $44,970.

McMullen admitted that he did not evaluate the debtors' mobile home personally. However, he said, the Miars' rating was clear, based on the N.A.D.A. system. He explained that they used N.A.D.A. checklists in their valuation. He then entered that information into the N.A.D.A. system and it translated into numbers. There were adjustments for the state location and for the condition of the home. In this case, he adjusted upward for the good condition of a deluxe model mobile home. He made adjustments for items that were included in the original mobile home, such as the bay windows, air conditioning, and skirting. If the appliances were not part of the original package, and if the field representative noted it, he would remove it from the value. He determined a value of $4,559 for the interior components and $996 for the accessories on the exterior of the home, such as

skirting. McMullen further explained that the N.A.D.A. calculation includes the depreciation rate for a mobile home. He himself does not calculate it, he explained; N.A.D.A. has it built into the software calculations "like Colonel Sanders' secret recipe."

Field representative Brenda Miars testified that she was under contract to do valuations for McMullen's company A2Z. She stated that she was trained by McMullen and that she conducted the valuation of the debtors' home. In this year alone, she said, she has conducted more than 900 valuations, which averaged out to 90 a month. She told the court that she could inspect 90 mobile homes in a month because some homes take a very short time and it was not hard to get through many homes in a day. She was unable to state how much time she spent training for the job, but said that McMullen showed her how to look for the items on the checklist. She was trained to mark an item "good" when there was no damage to it, "fair" if the item was dented.

Referring to Creditor's Exhibit 1, she testified that she evaluated the condition of the debtors' home by marking the checklist found on pages F and G, the "Repossession Inspection Condition Report." She looked at all the items and checked the appropriate box to indicate each item's condition. She reported that everything was in "good" condition except the shed, which she marked "fair." The debtors' mobile home was very well maintained, with no damage, she said. She sent the information to McMullen.

Dave Miars testified that he has been a field representative for A2Z for 18 months. He too received his training from McMullen. He explained that McMullen did ten homes with him, using the checklist and showing him what would be counted as "good" or "fair." With respect to the valuation of the debtors' mobile home, he took the photographs of the inside and outside of the home and of the neighborhood. His photos showed the special features of the mobile home, like the shingle roof, vinyl siding, good carpeting, ceiling fans, hardwood floors, fireplace, chandelier, and gas stove. He also conducted the community and mobile home park valuation on Creditor's Exhibit 1, page E. He looked at the number of vacancies and empty lots in the park and checked

for fire hydrants, a pool, and the overall condition of the park. Dave Miars commented that, if the mobile home park was well maintained, vacancies do not hurt the value of an individual mobile home. He stated that he went through 50-60% of the park where the debtors lived while Brenda checked the components.

Brenda Miars then was recalled to the witness stand. She was asked whether she did the checklist on page C. She testified that she did not fill out that page. She filled out pages F and G, which included the components inside and outside the house, and that information then was compiled on page C, entitled "Components Valuation," by someone else. Dave filled out the community information on page E only.

When the plaintiff had rested, the chapter 13 debtor John Wicoff testified as the owner of the mobile home being valued. He agreed that his home and the items in the home were in good condition. He said he bought the home in June 1995, after it had served for one year as a demonstration home on the lot, and that he paid $52,658. He owed about $45,000 when he filed his chapter 13 petition. He explained that he and his attorney obtained the valuation of the home by going online to the N.A.D.A. website. They added all the information about a deluxe Champion motor home built in 1994. He said that the N.A.D.A. guide stated that the average price of his home was $28,782. He then used that number for the valuation. Although the court refused to admit in evidence the N.A.D.A. guide submitted as Debtors' Exhibit B, because it did not identify the Champion brand or model number being valued, the court allowed the debtor's testimony of his personal valuation.

The debtor also testified that vacancies have an adverse effect on the values of mobile homes in a mobile home park. He stated that in his park a large number, 45 or more, of the 209 lots with homes on them stand empty. He acknowledged that his mobile home was in good condition and that the only repairs required now are two sources of water leaks that must be fixed.

The hearing concluded with the creditor's summary that the value of the mobile home, as shown in Exhibit 1, was $44,970. The debtor argued that the estimates presented in Exhibit 1 were overgeneralized figures

and that the value of the mobile home should be fair market value stated in the debtors' chapter 13 plan, $28,800. The court took the valuation under advisement.

Discussion

The court has before it a typical "cramdown" situation: The debtors have proposed a chapter 13 plan that allows them to keep Chase's collateral, the mobile home in which they reside, but gives it a value substantially lower than the secured creditor claims it is worth.[1] Creditor Chase's objection to the debtors' proposed chapter 13 plan, specifically to the plan's bifurcated treatment of its claim, raises a challenge to the debtors' valuation of their residential mobile home. Generally, a creditor objecting to the confirmation of a debtor's plan bears the initial burden of producing evidence to show the validity of its objection. *See, e.g.*, *In re Smith*, 286 B.R. 104, 106 (Bankr. W.D. Ark. 2002) (citing cases); *In re Brown*, 244 B.R. 603, 608 (Bankr. W.D. Va. 2000); *In re Hermann*, 224 B.R. 101, 102 (Bankr. D. Minn. 1998). However, the debtor has the burden of proving that the chapter 13 plan complies with the statutory requirements for confirmation of a plan. *See In re Hendricks*, 250 B.R. 415, 420 (Bankr. M.D. Fla. 2000); *In re Brown*, 244 B.R. at 608. At the trial, the court placed the initial burden on the objecting creditor.[2]

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[1] To satisfy the "cramdown" provision of the Bankruptcy Code, 11 U.S.C. § 1325(a)(5)(B), a debtor wishing to keep the creditor's collateral must propose, in his chapter 13 plan, that the creditor retain its lien on the collateral and receive "value, as of the effective date of the plan [that] is not less than the amount of such [creditor's allowed secured claim]."

[2] The court notes that the parties failed to comply with the court's pretrial order requiring that exhibit and witness lists and appraisals be exchanged and a copy filed with the court by September 22, 2003. Chase filed its list on October 21, 2003, and the debtors on the day of trial, October 22, 2003. The court asked the parties for an explanation; no good cause showing was proffered. Rather than prohibit the introduction of exhibits and deny the parties a trial, to the detriment of the debtors' bankruptcy proceeding, the court reluctantly allowed the parties to present evidence so that the debtors' chapter 13 plan could move forward. The debtors had attached to their tardy Exhibit List two exhibits. The N.A.D.A. appraisal was ruled inadmissible because it failed to identify the criteria used in the appraisal. The valuation letter from Tops Home Center was not even proffered. The only valuation presented by the debtors, therefore, was the personal valuation by John Wicoff of $28,800 and his

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Because the court is asked to determine the amount of the secured portion of Chase's claim, the amount that the debtors must pay to the creditor in order for the debtors to retain and use their residential mobile home, it turns to § 506(a), which provides for the bifurcation of claims:

> An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a). The court under § 506(a) must determine the extent of Chase's interest in the estate's interest in the debtors' mobile home.

"Before a plan invoking the cramdown provision can be confirmed, a bankruptcy court . . . must determine the value of the collateral as of the effective date of the plan." *In re Till*, 301 F.3d 583, 587 (7th Cir. 2002), *cert. granted*, 123 S. Ct. 2572 (2003). The effective date of the plan, in this context, is generally accepted to be the date of confirmation of the plan. *See, e.g., In re Stembridge*, 287 B.R. 658, 664 (Bankr. N.D. Tex. 2002); *In re Farmer*, 257 B.R. 556, 561 (Bankr. D. Mont. 2000); *In re Kennedy*, 177 B.R. 967, 974 (Bankr. S.D. Ala. 1995). *But see In re Marquez*, 270 B.R. 761, 768 (Bankr. D. Ariz. 2001) (calculating replacement value of collateral securing claim as of petition date).

To determine the value of the collateral, the Supreme Court in *Associates Commercial Corp. v. Rash*, 520 U.S. 953, 117 S. Ct. 1879, 138 L.Ed.2d 148 (1997), held that, when chapter 13 debtors choose to keep and use the secured property at issue, bankruptcy courts must apply the replacement-value standard, rather than a foreclosure valuation or a split-the-difference approach, for valuation purposes. *See Rash*, 520 U.S. at 965, 117

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[2](...continued)
testimony that the value should be lower than the creditor's offered amount because of the many vacancies in the mobile home park.

S. Ct. at 1886. According to *Rash*, "the value of the property (and thus the amount of the secured claim under § 506(a)) is the price a willing buyer in the debtor's trade, business, or situation would pay to obtain like property from a willing seller." *Id.*, 520 U.S. at 960, 117 S. Ct. at 1884. The value of the secured interest in the mobile home, therefore, is the "cost the debtor would incur to obtain a like asset for the same 'proposed . . . use.'" *Id.*, 520 U.S. at 965, 117 S. Ct. at 1886.

In this case, both parties attempted to prove the value of the mobile home by offering values taken from the National Automobile Dealers Association guide for mobile homes, the N.A.D.A. Manufactured Housing Appraisal Guide. The N.A.D.A. guides are market reports and compilations generally relied upon by the public, and courts have found that they fit within the exception to the hearsay rule found in Federal Rule of Evidence 803(17). *See In re Williams*, 224 B.R. 873, 874 n.2 (Bankr. S.D Ohio 1998) (citing *In re Roberts*, 210 B.R. 325, 330 (Bankr. N.D. Iowa 1997)). "The N.A.D.A. value approximates the amount a dealer would charge a retail customer" for the collateral being valued. *In re Stembridge*, 287 B.R. at 663 n.13. The N.A.D.A. Manufactured Housing Appraisal Guide contains forty years of values for all models and types of mobile homes. *See In re Willis*, 115 B.R. 518,518 (Bankr. D.S.C. 1989) (utilizing that guide for valuation of mobile home). The values presented in such guides are generally admissible evidence in valuation hearings.

Nevertheless, courts also insist that sources such as N.A.D.A. guides are convenient but "are not dispositive on valuations." *In re Stembridge*, 287 B.R. at 663 n.13; *see also In re Williams*, 224 B.R. at 874 n.1 (finding that the Supreme Court, in *Rash*, "clearly did not intend that 'replacement value' automatically equates to the N.A.D.A. retail value without additional consideration by the Court"). Courts are directed to use N.A.D.A. values in conjunction with expert testimony rather than as conclusive evidence. *See In Re Roberts*, 210 B.R. at 330. In fact, courts are warned that "[e]xclusive reliance on N.A.D.A.'s industry averages may contradict the court's duty under § 506(a) to value the specific collateral in the case before it." *Id*. at 330-31 (citing *In re Johnson*, 165 B.R. 524, 529 (S.D. Ga. 1994)). In *Roberts*, the Iowa bankruptcy judge admitted parts of the

N.A.D.A. guide as "a parameter for valuing" the debtor's car, *id.* at 331, but examined the record for evidence of the car's condition before determining the secured value of the auto.

In this case, the court has before it the debtor's testimony that the value of his mobile home was $28,800, the amount he listed in his schedules. It finds that, under Federal Rule of Evidence 701, an owner is competent to give his opinion concerning the value of his property. *See In re Stratton*, 248 B.R. 177, 182 (Bankr. D. Mont. 2000). After observing the demeanor of the debtor while he testified under oath, the court determines that the debtor's testimony was credible, but was not well founded. The debtor's N.A.D.A. evidence was inadmissible, and he presented no other evidence – an independent appraisal from a realtor or comparable sales of mobile homes in the area, for example – from which to calculate a value.

The creditor's evidence, presented by the expert witness William L. McMullen, A2Z Mobile Homes president, and his two field representatives, was a thorough valuation based upon the N.A.D.A. Manufactured Housing Appraisal Guide dated May through August 2003. The court found those witnesses credible and informative. It further found that the N.A.D.A. appraisal book provides an instructive guide to the value of the mobile home. It is relevant and probative of the court's initial consideration of the mobile home's worth but not of its ultimate determination of valuation.

The court first questioned the method by which the information was gathered. It was concerned about the thoroughness of an inspection done by field representatives who appraised 90 mobile homes a month. On such a schedule, they were required to make rapid decisions about the quality of the components of the mobile home and to compile their data on checklists with speed and with few or no comments.[3] The court also wondered how McMullen, who received the information from his field representatives and ran the data through the N.A.D.A. software to establish the valuation, could have checked the validity and accuracy of the information

[3] In this case, Brenda Miars checked off 95 "good" ratings and 1 "fair" one. There was no testimony concerning the amount of time spent at the debtors' mobile home.

sent electronically to him in Ohio. The court is not challenging the truthfulness of the witnesses but rather the industry-wide accepted method of entering 95 checkmarks of "good" and one checkmark of "fair" into a computer software system to achieve a final number that gives value to the collateral. It is well recognized that a computer algorithm is only as good as its input quality checklists. The court finds that a system that receives data by "remote control" from field representatives and enters it into software that translates the data into numbers like "Colonel Sanders's secret recipe," as McMullen testified, should not be the ultimate determination of valuation.

From the pages of the N.A.D.A. Manufactured Housing Appraisal Guide, the court confirmed that the base value of the mobile home was $35,385. However, the court disagreed with two adjustments made by McMullen. First, it found excessive the condition adjustment of 107%. That adjustment was reserved for mobile homes with a remaining physical life of 25-32 years. However, McMullen testified that he believed this mobile home could last 30 years. The mobile home, built in 1994, is 10 years old and thus may have a 20-year life span. Under the Condition Guidelines the condition modifier for 16-25 years is 82%, not 107%. Thus, on line 3 of the Valuation Summary, the value should be $29,886.54 rather than $38,998 — a difference of $9,111.46.

Second, the court found the 108% community adjustment excessive. The debtor testified that 45 or more of the 209 mobile home lots were vacant. In the view of the court, a mobile home park with 20-25% of its lots empty does not qualify for a "standard" adjustment, which reflects a minimal number of homes for sale and no empty lots. Nor does it qualify for a "fair" adjustment, which has for-sale signs and some vacant lots. Instead, the court believes it falls closer to the "poor" category, which includes for-sale signs and excessive vacant lots. The N.A.D.A. community adjustment adds 3% for the "fair" category and subtracts 7% for the "poor" category. The court believes that the adverse effect of the vacancies in the debtors' mobile home park can best be measured by neither adding nor subtracting a community adjustment. The amount added to the valuation summary by McMullen for a community adjustment was $3,257. The court finds that the proper calculation of the mobile

home's worth, using the N.A.D.A. guide to provide parameters but not to establish conclusive valuation, is $44,970 minus $9,111 (the excessive condition adjustment) and minus $3,257 (the excessive community adjustment). The resulting valuation, the court finds, is $32,602.[4]

The court concludes that the value of the debtors' mobile home, and therefore the amount of Chase's secured claim, is $32,602.

The court reminds the parties that it has determined only the value of the collateral and not any other matter concerning confirmation of the debtors' chapter 13 plan remaining for resolution. The debtors still are required to prove, at a continued confirmation hearing, that their chapter 13 plan complies with the statutory requirements for confirmation.

Conclusion

For the reasons stated in this Memorandum of Decision, the court finds that the value of the debtors' residential mobile home, and therefore the value of the secured portion of Chase's claim, is $32,602. The court will reschedule the continued confirmation hearing on the debtors' chapter 13 plan by separate order.

SO ORDERED.

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HARRY C. DEES, JR., CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

[4] The court made its valuation determination based on the only evidence presented to the court, the May through August 2003 Guide provided to the court by the creditor. Those figures demonstrated a valuation as of the date of the debtors' chapter 13 petition, June 2, 2003, and as of the date of the appraisal, August 19, 2003. The court is not able to determine the value of the collateral as of the effective date of the debtors' chapter 13 plan because the plan has not been confirmed. The court is of the view that this valuation is a reasonable and appropriate fair market value of the debtors' mobile home.